

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ANTHONY FAVALE,

Petitioner,

-against-

ORDER

12-CV-4117(JS)

FRANK STRADA, WARDEN,  
METROPOLITAN DETENTION CENTER,

Respondent.

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APPEARANCES:

For Petitioner: Anthony Favale, Pro Se  
25190-053  
Metropolitan Detention Center  
P.O. Box 329002  
Brooklyn, NY 11232

For Respondent: No Appearance

SEYBERT, District Judge:

Pending before the Court is incarcerated pro se petitioner Anthony Favale's ("Petitioner") application to proceed in forma pauperis. The Court finds that Petitioner's financial position qualifies him to commence this action without prepayment of the Court's filing fee. Accordingly, the application to proceed in forma pauperis is GRANTED. The Court further directs that the Clerk of the Court consolidate this action with Petitioner's earlier-filed habeas petition, Favale v. U.S.A., 10-CV-4396(JS), and to mark this matter closed. Both petitions challenge Petitioner's sentence following his May 2, 2008 guilty plea to possession of counterfeit currency in violation of 18 U.S.C. § 472 before the undersigned.

Given the consolidation, together with the fact that the

United States has already responded to the earlier-filed petition, the Court further directs that **the U.S. Attorney for the Eastern District of New York, as attorney for the Respondent, shall either (1) advise the Court in writing within twenty (20) days whether it intends to rest on its earlier submission or, (2) supplement its response by filing a return to the petition why such motion pursuant to 28 U.S.C. § 2241 should not be granted.** Any submission in response to this Order filed by the Government shall be served by the U.S. Attorney upon the Petitioner and proof of such service shall be filed with the Court. **Within twenty (20) days of receipt of the Government's response, the Petitioner shall file a reply, if any, with the Court.** The Clerk of the Court is directed to electronically serve the U.S. Attorney with this Order and the motion filed pursuant to 28 U.S.C. § 2241, and to mail a copy of this Order to the Petitioner.

The Court certifies pursuant to 28 U.S.C. § 1915 (a)(3) that any appeal from this Order would not be taken in good faith and therefore in forma pauperis status is denied for the purpose of any appeal. Coppedge v. United States, 369 U.S. 438, 444-45, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962).

SO ORDERED.

Dated: September 19, 2012  
Central Islip, New York

/s/ JOANNA SEYBERT  
Joanna Seybert, U.S.D.J.